

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JUAN M FERNANDEZ

Claimant

ADVANCED STUCCO OF IOWA LLC

Employer

APPEAL NO. 10A-UI-12575-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/05/09

Claimant: Respondent (6-R)

871 IAC 26.8(1) - Withdrawal of Appeal

STATEMENT OF THE CASE:

The employer appealed from a department representative's decision dated August 31, 2010, reference 02, that held no offer of work was made on July 29, 2010, and benefits are allowed. A telephone hearing was scheduled for October 25, 2010. Prior to the hearing being held, the appellant/employer requested the appeal be withdrawn.

ISSUE:

The issue is whether the appeal should be withdrawn.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds that: A request has been made by the appealing party to withdraw the appeal. The request has been orally that has been recorded.

The employer is not contesting the claimant receiving benefits from the date of his additional claim on August 1, 2010 due to a recall to work on July 29, but it is protesting his separation from employment on September 15, 2010. The employer is requesting that a department representative hear its protest on this issue.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 26.8(1) provides:

- (1) An appeal may be withdrawn at any time prior to the issuance of a decision upon the request of the appellant and with the approval of the presiding officer to whom the case is assigned. Requests for withdrawal may be made in writing or orally, provided the oral request is tape-recorded by the presiding officer.

The administrative law judge has reviewed the records and files herein and concludes that the request of the appealing party to withdraw the appeal should be approved.

The administrative law judge further concludes the employer request to have the department consider its protest on the claimant's employment separation of September 15, 2010 is granted. This issue is remanded to Claims to schedule a fact-finding hearing.

DECISION:

The decision of the department representative dated August 31, 2010, reference 02, is affirmed. The request of the appealing party to withdraw the appeal is approved, and the decision of the representative shall stand and remain in full force and effect. Benefits are allowed, provided the claimant is otherwise eligible. The employment separation issue of September 15, 2010 is remanded to Claims for a fact-finding hearing.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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